

Date:

MEMORANDUM

From: Counsel, U.S. Fleet and Industrial Supply Center, Yokosuka

To:

Via: Director, Far East Contracting Office

Subj: PROCESSING UNAUTHORIZED COMMITMENTS

Encl: (1) NAPS 5201.602-3

(2) Sample letter

1. An unauthorized commitment from your command has been submitted for ratification. An unauthorized commitment is an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. It is the policy of the U.S. Government that agencies take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in the Federal Acquisition Regulations (FAR) and the Navy Acquisition Procedures Supplement (NAPS) "for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel." FAR 1.602-3
2. Enclosure (1) outlines the required procedures for ratifying an unauthorized commitment. Please review your submission, using this outline as a guide to ensure that all requirements have been met. These procedures must be followed carefully; packages not containing the required information will be returned to the originating command for compliance with the requirements.
3. Please note that, in accordance with the NAPS, if the Commanding Officer concurs that the commitment should be ratified, **his/her endorsement** must contain statements that verify the accuracy and completeness of the documentation, describe the measures taken to prevent a recurrence of unauthorized commitments, and provide a complete purchase description and funding for the ratifying contract. Please note that this document must be signed by the Commanding Officer. "By direction" signatures are not acceptable.
4. Also note that if the ratification occurs in a subsequent fiscal year, the obligation is chargeable to funds from the prior year, i.e., the year in which the need presumably arose and the claimant performed.
5. Enclosure (2) is the format and style for information only. These letters should not be copied verbatim as the fact pattern of each unauthorized commitment is different.
6. Please contact Harriet Wright, at DSN 243-7764 or harriet_c_wright@yoko.fisc.navy.mil, if you have questions or need additional guidance.


H.C.R. WRIGHT
Counsel

GOVTK-NAPS - 5201.602-3, Ratification of unauthorized commitments.

----- Excerpt from page 32 follows -----
NAVY ACQUISITION PROCEDURES SUPPLEMENT (NAPS)
PART 5201
FEDERAL ACQUISITION REGULATIONS SYSTEM
SUBPART 5201.6--CONTRACTING AUTHORITY AND RESPONSIBILITIES
5201.602 Contracting officers.

5201.602-3 Ratification of unauthorized commitments.

(b) Policy.

(3) HCAs may delegate authority to ratify unauthorized commitments of \$50,000.00 or less to a level no lower than the CCO. All proposed ratifications shall be reviewed by the appropriate counsel(s) of the Office of the General Counsel and all contracts shall be approved as to form and legality.

(c) Limitations.

(7)(i) The officer or employee making the unauthorized commitment shall forward to that person's Commanding Officer documentation concerning the transaction, which shall include as a minimum:

(A) A statement signed by the officer or employee describing the circumstances, why normal procurement procedures were not followed, what bona fide Government requirement necessitated the commitment, whether any benefit was received, its value, and any other pertinent facts; and

(B) All orders, invoices, or other documentary evidence of the transaction.

(ii) If the Commanding Officer concurs that the commitment should be ratified, then the Commanding Officer shall forward the documentation described above to the contracting officer with an endorsement that:

(A) Verifies the accuracy and completeness of the documentation;

(B) Describes the measures taken to prevent a recurrence of unauthorized commitments; and

(C) Provides a complete purchase description and funding for the ratifying contract.

(iii) The contracting officer shall:

(A) Review the documentation and endorsement provided;

(B) Ascertain whether there are any doubtful questions of fact;

(C) Prepare a determination and findings addressing the limitations in > FAR 1.602-3(c) (1) through (7).

(D) Prepare a recommendation to the ratifying official;

(E) Prepare appropriate contractual documents; and

(F) Submit the contract and supporting documents to counsel for an opinion as to form and legality and for any additional pertinent comment or advice.

(iv) The ratifying official to whom authority has been delegated pursuant to (b) (3) above shall review the file, and if ratification is proper, make the appropriate determination and findings.

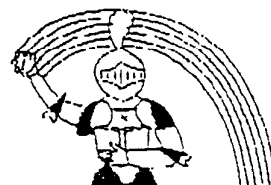
(v) Records. HCAs shall ensure that a record of all ratification actions is maintained. This record shall include, the identity of the contracting office performing the ratification, the dollar value of the ratification action, and a copy of the required determination and findings.

Copyright (c) West Publishing Co. 1997 No claim to original U.S. Govt. works.

Statement



DEPARTMENT OF DEFENSE
DEPENDENTS SCHOOLS
SHIRLEY LANHAM ELEMENTARY SCHOOL
US NAF ATSUGI, JAPAN
PSC 477, BOX 38
FPO AP 96306-0005



PACIFIC

September 21, 1994

LANHAM

MEMORANDUM FOR: Ms. Susan H. Jackson, Principal

SUBJECT; UNAUTHORIZED COMMITMENT

REF: (a) Letter, February 8, 1994: Commanding
Officer, US NAF Atsugi
(b) Invoice from Aoi Company, 2/2/94

I am responsible for the unauthorized commitment of government funds as it concerns the procurement of door name plates from the Aoi Company for Shirley Lanham Elementary School.

As stated previously to you, I was not aware that there would be a charge for the name plates as I believed that they were materials furnished as part of the Japanese Government Facilities Improvement Program (FIP) and were not specifically identified as United States government furnished/supplied items. I regret that this incident took place and that funds were committed without prior approval.

In the future, I will strictly abide by the governing regulations that required prior approval for purchases and commitment of government funds on all project, materials, and supplies requisitioned by the school.

This items were procured during the FY 1993 school year and used FY 93 fund citations.

James. E. Fisher
Assistant Principal



DEPARTMENT OF DEFENSE

DEPENDENTS SCHOOLS
SHIRLEY LANHAM ELEMENTARY SCHOOL
US NAF ATSUGI, JAPAN
PSC 477, BOX 38
FPO AP 96306-0005

PACIFIC

February 8, 1994

FROM: Principal, Shirley Lanham Elementary School

TO: Commanding Officer, U.S Naval Air Facility, Atsugi

VIA: (1) NAF Legal Officer
(2) NAF Supply/Comptroller Department

SUBJ: UNAUTHORIZED COMMITMENT

Ref: (a) NAVSUPINST 4200.85

Encl: Invoice from Aoi Company, 2/2/94

1. The items that were received from Aoi Company were blank, plastic name plates that were designed to fit into the classroom identification boards indicating classroom number and occupant. The Japanese contractor responsible for the Facility Improvement Project (FIP) had supplied the correct number as required by the initial criteria package specifications but the school wished to have additional blanks to have on hand to add flexibility to classroom usage and in case of damage. The contractor arranged to have the blanks delivered by the company supplying the original plates.

2. The school was not aware or informed that there was an extra charge for the additional plates. The plates were received via Japanese delivery service with no indication that an invoice or charge was due. At no time between the receiving date in September was the school contacted about sending payment for the items. We received no formal invoice or billing request until February 2, 1994. That was the first indication that an unauthorized contract arrangement had been committed. It was not the intent of the school to purchase the items in questions and would not have requested them knowing that funding was involved or necessary. It was thought that they would be supplied as part of the Government of Japan (GOJ) supplies and equipment portion of the FIP project. Phase I for the school.

3. In accordance with reference (a), ratification is requested. All of the following conditions in reference (a) have been met:

a. The government has received benefit from the additional plastic name plates that have been supplied to the school.

b. The supplier believed that the school was officially purchasing the additional name plates at the Japanese contractors request and instructions. The school was not given proper or

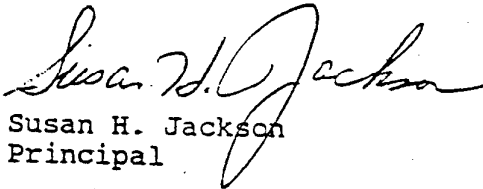
adequate information from the Japanese contractor that there would be a charge of the materials provided.

c. The purchase price was from the same supplier that provided the original classroom name plates under the GOJ FIP project and matched the dimensions for the existing wall holders. Continuity and usefulness was ensured. The Assistant Principal, Mr. James E. Fisher, acted in good faith in controlling procurement procedures and obligating government funds.

d. The purchase of these items would have been proper if the Japanese contractor and supplier informed the school that the materials needed to be purchased and not supplied under the conditions of the GOJ FIP guidelines. The DD-1149 would have been filed and processed in accordance with existing procurement guidelines if all the pertinent information was available at the time of the initial request to the Japanese contractor.

4. By receipt of enclosure (1) the government has been billed in the amount of Yen 41,200 for plastic classroom nameplates and, based upon the circumstance, the Aoi Company has not been paid.

5. Based upon the above, this request is submitted for your approval.


Susan H. Jackson
Principal



DEPARTMENT OF THE NAVY
U.S. NAVAL AIR FACILITY
ATSUGI, JAPAN
FPO AP 96306-1209

Endorsement

Sample

4200

Ser 40/ 00393

09 MAR 1994

From: Commanding Officer, U.S. Naval Air Facility, Atsugi, Japan
To: Commanding Officer, U.S. Fleet and Industrial Supply Center, Yokosuka, Japan

Subj: CLAIM FOR PAYMENT RESULTING FROM UNAUTHORIZED COMMITMENT

Ref: (a) NAVSUPINST 4200.85A CH 1 PARA 4
(b) Federal Acquisition Regulations (FAR) Section 1.600
(c) Defense FAR Supplement (DFARS) 201.602, 201.603

Encl: (1) LTR from Principal, Shirley Lanham Elementary School to Commanding Officer NAF Atsugi dated 8 Feb 1994.

(2) Invoice from AOI Company dated 2 Feb 1994.

1. In accordance with references (a) through (c), enclosures (1) and (2) are submitted for your review/approval.

2. Information requested by references (a) through (c) are as follows:

a. Service provided: Blank, plastic name plates that were designed to fit into the classroom identification boards indicating classroom number and occupant.

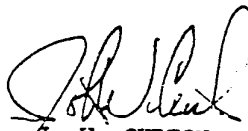
b. Normal contracting procedures were not followed because SLES personnel did not submit the requisition document DD 1149 through NAF Supply Purchase Branch prior to the ordering of plastic name plates. Plates were provided from vendor in September 1993.

c. The amount claimed by the vendor listed under enclosure (2) is considered fair and reasonable.

d. Chargeable accounting data:

9740100.6006.P1100 5124 2612 JA LF - 1046 S94390

e. Shirley Lanham Elementary School personnel have been instructed concerning the proper procedures regarding procurement of services or supplies. These procedures will be strictly adhered to in the future. In addition, correct procurement procedures have been reiterated to all customers serviced by our office.


J. W. CURTIN